

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NICKOLAS JAMES GONZALES,

Plaintiff,

v.

No. 1:20-cv-00762-KWR-LF

THE NEW MEXICO
CORRECTIONS DEPARTMENT, *et al*,


Defendants.

ORDER OF VOLUNTARY DISMISSAL

THIS MATTER comes before the Court on Plaintiff's *pro se* Motion to Withdraw (Doc. 8). Plaintiff moves to "close out" his Prisoner Civil Tort Complaint (Doc. 1-1), stating he "cannot pursue the matter." The Court construes the Motion as a request for voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i). That rule gives plaintiffs a right to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(A)(i). *See also Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003) (noting the right to dismiss under Rule 41(a)(1)(i) is "absolute"). This case is still in the screening phase, and Defendants have not been ordered to file a responsive pleading. Therefore, the Court will grant the Motion and dismiss the Complaint (Doc. 1-1) without prejudice. The Court will also deny Plaintiff's pending Motion for Protective Order (Doc. 7), which is now moot.

IT IS THEREFORE ORDERED that the Motion to Withdraw (**Doc. 8**) is **GRANTED**; the Motion for Protective Order (**Doc. 7**) is **DENIED AS MOOT**; and the Court will enter a judgment closing the case.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE